

# MORGANTOWN BOARD OF ZONING APPEALS

## MINUTES

March 18, 2005

6:30 P.M.

City Council Chambers

**Members Present:** Kevin Leyden, Nick Iannone, Bernie Bossio, Jim Rockis, and Mark Furfari.

**Members Absent:** None.

**Staff Present:** Jim Wood, Planning Director.

### MATTERS OF BUSINESS:

J. Wood introduced the new Board member, Mark Furfari.

Motion by N. Iannone, second by J. Rockis, to table the November and February minutes. Motion carried unanimously.

### OLD BUSINESS:

1. **CU04-07 / CU04-08 / Castle / 1029 University Avenue:** Request by Michael Castle for conditional use extension for a multi-family dwelling in a B-4 District and shared parking at 1029 University Avenue. Tax Map #28, Parcel #5; a B-4, General Business District.

J. Wood stated that these were conditional use cases a year ago that have not yet been acted upon. Nothing in the original application has changed. The original staff report, from March of 2004, has been included and this is simply a request for reauthorization of the permit.

J. Wood read §23.J., *Board of Zoning Appeals*, “In the case where a Variance or Conditional Use has not been used within twelve months after the granting thereof, then without further action it shall be null and void. This may be extended to 18 months upon prior written request of the Board. The word “use” shall mean that the approved variance has been activated as evidenced by permits, construction, or required licenses.”

Michael Castle, applicant, reported that this is based on a domino effect; NAPA is relocating and their new space is not yet ready.

J. Rockis questioned if the twelve-month time frame is fairly common.

J. Wood responded that it is usually 12 or 18 months.

K. Leyden asked for public comments. There being none, the public portion was closed.

M. Furfari asked if the ratio of parking is the same.

J. Wood replied that he is taking advantage of the same allowances as in the original permit.

Motion to approve the request by N. Iannone, second by J. Rockis. Motion carried 3-0. (B. Bossio and M. Furfari abstained because they were not BZA members when the original permit was heard).

2. **V05-02/ Trickett / 412 Cobun Avenue:** Request by Blondell Trickett and Kathleen DeWitt from the *Table 2, Residential Development Standards* for property located at 412 Cobun Avenue. Tax Map #29 Parcel #565; an R-1, Single-family Residential District.

J. Wood read the staff report stating that Ms. Trickett would like variance approval to build an attached single car garage in the rear of the property at 412 Cobun Avenue, accessible from Long Alley, which is 13.5 feet wide. The applicant is requesting a rear variance, both side yard variances, and a variance to exceed maximum lot coverage. The table in the report is a summation of the variance requests. The lot coverage, not including the proposed garage, is 34.68%. The parcel, which is 1,904 square feet, falls far below the standard R-1A lot requirement of 4,000 square feet.

J. Wood advised that after reviewing the preliminary plans, the Engineering Department has requested that the applicant move the garage 1.5 feet to the western side boundary, for purposes of improving sight distance and turning radius. This gives the applicant an adequate eastern side set back of five feet and decreasing the western side setback to 1.5 feet (a new variance request of 3.5 feet). The Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance. Staff believes that the request is reasonable, given the hardship imposed by the unusually small lot size.

Blondell Trickett, applicant, is requesting the garage since the one she has rented for 25 years will no longer be available.

K. Leyden asked for public comments. There being none, the public portion was closed.

J. Wood explained the Findings of Fact for variances and conditional uses.

Motion by N. Iannone to approve the Findings of Fact, second by J. Rockis. Motion carried unanimously.

Motion to approve the request as per the Engineering Department by J. Rockis, second by N. Iannone. Motion carried unanimously.

#### **NEW BUSINESS:**

3. **CU05-05 / Kuehn / 201 Walnut Street:** Request by John Kuehn for a multi-family structure in the B-4 District at 201 Walnut Street. Tax Map #26A, Parcel #122; a B-4, General Business District.

J. Wood read the staff report stating that Mr. Kuehn would like to convert the upper two floors of 201 Walnut Street from offices to six 2-bedroom apartments. The street level retail space will remain. The proposed location is in the B-4 Pedestrian District and requires no parking. Trash service for the apartments will be with rollout containers and curb service. There is no dumpster being proposed.

J. Wood advised that staff believes this is a sound adaptive reuse of this building, and one that maintains the commercial frontage on Walnut Street while providing residential units in the downtown and recommends approval.

John Kuehn, applicant, has noticed the demand for office space declining and has a list of people waiting for quality apartments.

K. Leyden asked for public comments. There being none, the public portion was closed.

Motion by N. Iannone to approve the Findings of Fact, second by J. Rockis. Motion carried unanimously.

Motion to approve the request by J. Rockis, second by B. Bossio. Motion carried unanimously.

4. **CU05-06 / Cellular One / 5000 Greenbag Road:** Request by David Ginter (Cellular One) to install a cellular telecommunications facility to include equipment, lines, and antennas on an existing structure (the Mountaineer Mall Water Tower) in a B-5, Shopping Business District at 5000 Greenbag Road. Tax Map #48A, Parcel #3: a B-5, Shopping Business District.

J. Wood read the staff report stating that David Ginter, representative from Cellular One, is requesting conditional use approval to install a cellular telecommunications facility to include equipment, lines, and antennas on the existing water tower located at the Mountaineer Mall. Cellular One would like to erect a stealth flat-panel antennae array on the existing handrail located on the water tower. The coax cable will be attached to the back of an existing tower leg, with the bands painted to match the color of the tower. Cabling and additional equipment will be located on a platform at the base of the tower. Details are on the site plan and photo renderings.

J. Wood reported that Cellular One had originally applied for approval from Monongalia County to erect a large (250') tower on a hillside just outside city limits, off the Greenbag Road, near Chippy's Transmission and the Baptist Church. This tower would have been highly visible to several residential neighborhoods inside the city. County Planner Christopher Fletcher realized that this could be potentially controversial, so he initiated a meeting with City officials and Cellular One to find an alternative.

J. Wood explained that Cellular One is seeking to solve a signal strength problem in that part of town. The results of the meeting were quite productive. It was determined by Cellular One's radio frequency engineer that the same coverage results could be achieved by erecting one regular tower on a different hillside much further away from the city, *in combination with* erecting a stealth antennae array at a location near Mountaineer Mall. The existing water tower was the logical choice for the array. Because of the high degree of cooperation between the city, the county, and the applicant, a solution was found that eliminated the need to erect an unattractive tower within close proximity to city neighborhoods.

J. Wood reported that staff strongly recommends approval because the water tower stealth antennae array is a key part of this optimal solution that takes the new tower farther away from city neighborhoods. He clarified why the Planning Commission tabled the request and then read §19.B. of the Zoning Ordinance and asked for the Board of Zoning Appeals' interpretation. J. Wood also explained the recently received Nationwide Programmatic Agreement Exemption.

Brian Peterson, Cellular One, stated they started the SHPO process and then realized it was not necessary because of the Nationwide Programmatic Agreement Exemption.

K. Leyden asked for clarification of where the antennae would be placed.

Mr. Peterson explained the plans and drawings.

K. Leyden asked for public comments. There being none, the public portion was closed.

David Ginter, Cellular One, orally amended the Findings of Fact. #1 was changed to “The proposed use is not a traffic generating use.” #3 was altered to “The equipment will be of such small size and location that it will be impossible to disturb the light and air.” Added to #4 was “as the equipment will be within the confines of the existing tower.” “The proposed use is a mechanical device that has no bearing on population congestion” was the change for #5 and for #6 was “The proposed use is a mechanical device that has no bearing on these issues.” #8 was altered to read “The proposed use preserves property values by utilizing stealth technology to ensure the least impact on surrounding properties.

Motion by N. Iannone to approve the Findings of Fact as amended, second by J. Rockis. Motion carried unanimously.

Motion to approve the request contingent upon Planning Commission approval in April by J. Rockis, second by N. Iannone. Motion carried unanimously.

- 5. CU05-07 / Camlan Creameries / 143 High Street:** Request by Camlan Creameries for a sign over twelve square feet in the B-4 District at 143 High Street. Tax Map #28A, Parcel #46 a B-4, General Business District.

J. Wood presented the staff report stating that Carvel Creameries is opening a new franchise at 143 High Street. The applicant originally requested a 24.5 square foot internally lit sign. However, the applicant has agreed to change the design from an internally lit sign to a neon design at the request of the Design Review Committee. The new design consists of outlined double-stroke neon lettering with the silhouette of the ice cream cone to be outlined with corresponding white and gold single stroke neon.

J. Wood read that 15.F.3.b – *Signs in Pedestrian Shopping Areas*, states, “Signs larger than twelve square feet and free-standing signs shall require Conditional Use approval, subject to conditions set by the Board of Zoning Appeals. The Design Review Committee is requesting that the applicant only be given 15 square feet of signage, instead of the requested 24.5 square feet. It is difficult to find information on other historic district locations for Carvel Ice Cream stores, so we have no real basis for comparison with their other locations. The sign will be partially blocked by the theater marquee but needs to stay in proportion to the façade and frontage of the building.

J. Wood advised that staff believes the new design is appropriate for the historic district. What remains to be decided is whether to accept the applicant’s requested size of 24.5 square feet, or to approve the same design with a maximum 15 square foot size.

Susan Riddle, applicant, commented on the artist’s rendering and the signage of the previous occupant.

J. Wood clarified that the Planning Commission had no preference as to the use of red or blue as the predominant color in the sign.

Ms. Riddle added that the theatre marquee obscures the sign location.

K. Leyden asked for public comments. There being none, the public portion was closed.

K. Leyden commented on the pedestrian nature of the downtown, suggesting that the target customer in terms of sign visibility should not automatically be assumed to be a motorist.

Ms. Riddle stated that a head count shows the majority of the people travel from north to south on High Street.

J. Wood reiterated that the marquee causes a sight vision obstruction.

B. Bossio questioned why they did not request a cantilevered sign.

Ms. Riddle explained that this is similar to Carvel's signage and they are trying to stay with the Art Deco building design and façade.

Mark Silverthorn, Hotel Morgan General Manager, stated the intention is to keep the façade looking historic. The 15' limit pushes the lettering down to 9', on 75 linear feet of store frontage, which would look tiny.

K. Leyden noted that the "C" in "Carvel" is big, which makes the whole sign, on paper, look bigger than it really is.

Ms. Riddle agreed that the "C" and the ice cream cone graphic at the end account for most of the size.

Mr. Silverthorn noted that the cone at the end of the sign is a trademark element.

B. Bossio requested another look at how signs are measured.

M. Furfari asked when the sign was developed and if an older sign is available.

Ms. Riddle replied that this is the oldest franchise in the country and their standard signs are not permissible here.

B. Bossio asked if the Board would be setting a precedent.

J. Wood answered that each case is evaluated on the Findings of Fact, which are unique to each case.

Motion by N. Iannone to approve the Findings of Fact, second by J. Rockis. Motion carried unanimously.

Motion to approve the request with the condition that there be no other Carvel signs of any size on the exterior of the building by B. Bossio, second by J. Rockis. Motion carried 4-1. (K. Leyden voted NO.)

6. **V05-03 / Byuse / 131 Linnehurst Avenue:** Request by Jackie Byuse for variance approval from zoning ordinance §14.4.E.1, *Type II, Class A Design and Appearance Standards*, which states “Roof Pitch: A minimum of 4:12” on property located at 131 Linnehurst Avenue. Tax Map #44 Parcel #146; an R-1A, Single-family Residential District.

J. Wood presented the staff report stating that Jackie Byuse is seeking variance approval from zoning ordinance §14.4.E.1, *Type II, Class A Design and Appearance Standards*, which states “Roof Pitch: A minimum of 4:12” on property located at 131 Linnehurst Avenue. The proposed manufactured house has an approximate 3:12 roof pitch. Ms. Byuse received variance approval in November of 2003 from the *Table 2, Residential Development Standards* set backs. The applicant purchased and has been making payments on a manufactured home with the non-conforming roof pitch for seven months, but as yet has not been able to locate the home on her property.

J. Wood explained that the manufactured home standards established in the zoning ordinance were put into place as a compromise to allow reasonable accommodation of manufactured homes into residential neighborhoods composed of mainly stick-built houses. The standards are designed to protect the residential character and property values of these neighborhoods. The manufactured home industry has made extraordinary leaps forward in terms of the quality and appearance of its product. However, all but the most expensive manufactured units still fall a little short of the design standards typical of stick-built housing. Many manufactured homes have roofs that are shingled exactly like a stick-built house, but the roof pitch is typically flatter.

J. Wood clarified that Ms. Byuse’s variance, if approved, would allow a unit with a flatter roof pitch to be placed in the city. The variance requested is minor in nature, as the attached photos and illustrations show. The applicant indicated the units that comply with our standards are about \$15,000 more expensive than the unit she chose. The board’s task is to determine if a variance is justified vis-à-vis the Findings of Fact criteria. Financial hardship has typically not been considered a sufficient stand-alone reason to rule in favor of a variance request. Staff offers no recommendation.

Mr. Byuse, applicant’s son, stated they were replacing missing permits because the salesman left the company and everything meets the code except the roof pitch. Other buildings in the area have a 3:12 pitch.

J. Wood remarked that the applicant was originally told the roof had a 3.7:12 pitch.

Mr. Byuse explained the misunderstanding about the roof pitch.

K. Leyden questioned why there is a law for a 4:12 pitch.

J. Wood explained that a typical stick-built home has a 4:12 or greater roof pitch.

B. Bossio asked if all homes must have a 4:12 roof pitch.

J. Wood replied that it is only for manufactured homes.

K. Leyden asked if those are made with a 4:12 pitch.

J. Wood stated that this was originally represented as almost a 4:12 pitch and the applicant has been making payments.

Mr. Byuse clarified that a roof ice guard was requested by Mike Stone, Chief Building Official, if a 3:12 pitch roof was approved.

K. Leyden asked for public comments. There being none, the public portion was closed.

M. Furfari asked if the dealer knew it was going in Morgantown.

Mr. Byuse replied that the Reedsville dealer knew.

J. Wood clarified that, with the new planning and enabling legislation, we can't be more restrictive on manufactured homes than stick-built homes.

M. Furfari questioned if a lot of manufactured homes are moving into the city.

J. Wood answered that it is infrequent; one or two a year.

The Findings of Fact #1 was amended by adding, "The use is consistent with the requirements of the new state planning enabling law and will be consistent with the city zoning code once the zoning code is amended to comply with the new state law."

Motion by J. Rockis to approve the Findings of Fact as amended, second by B. Bossio. Motion carried unanimously.

Motion to approve the request by B. Bossio, second by J. Rockis. Motion carried unanimously.

#### **OTHER BUSINESS:**

**Public Comments:** NONE.

**Staff Comments:** NONE.

#### **ADJOURNMENT**